

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 12-51
Table of Allotments,)	RM-11647
FM Broadcast Stations.)	
(Westfield, New York))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: August 2, 2012

Released: August 3, 2012

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* (“*Notice*”),¹ issued in response to a Petition for Rule Making filed by Connoisseur Media of Erie, LLC (“*Petitioner*”). *Petitioner* filed comments. No counterproposals or other comments were received in response to this *Notice*. For the reasons discussed below, we amend the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules,² by allotting Channel 265A at Westfield, New York.³

2. **Background.** The *Notice* proposed the allotment of Channel 265A at Westfield, New York, as its first local transmission service.⁴ To accommodate this allotment, *Petitioner* filed a hybrid application, proposing the substitution of Channel 285B1 for Channel 265B1 and modification of Station WRKT(FM) at North East, Pennsylvania.⁵

3. *Petitioner* filed comments, stating that its proposal is in the public interest because it would provide a first local service to Westfield, and a new reception service to over 41,000 persons, including over 11,000 underserved listeners. *Petitioner* argues that its proposal should not be treated as a proposal to serve the Erie Urbanized Area. It contends that the *Rural Radio*⁶ urbanized area service presumption is only relevant if there is a comparison of the proposed allotment to another mutually exclusive proposal. Additionally, *Petitioner* argues that the proposed Westfield allotment is not located within the Erie

¹ See *Westfield, New York*, Notice of Proposed Rule Making, 27 FCC Rcd 2214 (MB 2012).

² 47 C.F.R. § 73.202(b).

³ As stated in the *Notice*, *Petitioner* filed a FCC Form 301 application for the proposed allotment of Channel 265A at Westfield. See File No. BNPH-20110603AAQ.

⁴ Westfield has a 2010 U.S. Census population of 4,896 persons, governed by a supervisor and town council, the community has a real estate assessor, tax collector, and town court with two justices, along with schools, a library, museum, historical society, and several local businesses.

⁵ See File No. BPH-20110509AAL. On December 6, 2011, the Audio Division granted the application for Station WRKT(FM) to specify operation on Channel 285B1 at North East, Pennsylvania.

⁶ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order On Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011), *petitions for recon pending* (“*Rural Radio*”).

Urbanized Area, nor would the proposed allotment cover at least 50 percent of the urbanized area, nor could the proposed allotment be modified to serve at least 50 percent of any urbanized areas. Despite that fact, Petitioner submitted a *Tuck* showing to demonstrate that Westfield is independent from the Erie Urbanized Area.

4. **Discussion.** We agree with the Petitioner's contention that we are not required to consider the impact of the revised Section 307(b) standards set forth in *Rural Radio* to act on Petitioner's proposal because no counterproposals or other competing proposals were filed. Nevertheless, we agree with Petitioner that the presumption does not apply here based on the submitted showing. Accordingly, we are allotting Channel 265A at Westfield, New York, as its first local service under Priority 3.⁷ Channel 265A can be allotted to Westfield consistent with the minimum distance separation requirements of the Rules with a site restriction 3.4 kilometers (2.1 miles) west of the community. The reference coordinates are 42-18-51 NL and 79-37-04 WL. The allotment of Channel 265A at Westfield is located 320 kilometers (199 miles) from the Canadian border. Therefore, Canadian concurrence has been requested and approved by the Canadian government.

5. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

6. **Ordering clauses.** Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective September 17, 2012, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Communities</u>	<u>Channel No.</u>
Westfield, New York	265A

7. The window period for filing applications for Channel 265A at Westfield, New York will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

8. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

⁷ The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). *See Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982).